IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1006 OF 2004

Shankar Narayan Surve
(since deceased through his L.R.s)
Sambhaji Shankar Surve & ors. ... Appellant

V/s

Rakhamabi Bidu Yadav & ors. ... Respondents

Mr. P.J. Pawar for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 28TH JUNE, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Sangli, dated 23.3.2004 allowing the appeal and setting aside the judgment and order passed by the Civil Judge, Jr.Divn., Kavthe-Mahankal dated 26.7.1993 decreeing the suit.

2. I have heard the learned counsel for the appellant who is defendant No.5 in the suit who is held to be bonafide purchaser for value without notice of the suit property. In fact, as the record shows, it was a case of the plaintiffs that defendant No.1, with an intention

to deprive the sharers and rights of the plaintiffs, started illegaly alienating the property to defendant Nos. 5 and 6 without any reason and transferred and sold the suit properties to them and hence the cause of action arose for filing of the suit for partition and possession of the respective shares.

3. The present appellant defendant No.5 claimed protection on the ground that the sale effected by defendant No.1 was for legal necessity and he was bonafide purchaser for value without notice which aspect was negated by the Trial Court against which the appeal came to be preferred.

4. The learned lower appellate Court Judge, after hearing both sides, partly allowed the appeal holding that the appellant defendant No.5 who only has preferred this appeal, had proved that he was bonafide purchaser for value without notice and, as such, issued direction by way of operative order to the effect that while effecting the partition, the Collector should see that 5/8 share of defendant Nos. 1 to 4 be adjusted in favour of defendant No.5 in suit land described in plaint para 1(a) and the share of plaintiffs in the remaining land out of suit property in plaint para 1(b)

and remaining portion of land described in para 1(a) including house property, well and electric motor.

5. Therefore, after hearing the learned counsel for the appellant and on perusal of the record, I am satisfied that the learned lower appellate Court Judge has rightly appreciated the evidence and has given due relief to defendant No.5 while rejecting the plea of defendants to the effect that plaintiffs had their share in favour of one Rangrao and subsequently in favour of defendant No.1. This finding which is also sought to be challenged on behalf of the appellant is held to be rejected by the learned lower appellate Court Judge rightly and, therefore, it would brook no interference.

6. In the result, the appeal has no merits. The interest of present appellant - defendant No.5 is seen to be guarded by the lower appellate Court Judge to the extent legally permissible and hence the appeal deserves to be dismissed and stands dismissed.

(P.V. Kakade, J.)